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# Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 February 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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# BANGLADESH: Justice institutions need fundamental change to address torture

The Asian Legal Resource Centre (ALRC) is making its Written Submission to the 31st Regular Session of the UN Human Rights Council when the Council is about to celebrate its ten-year anniversary. Adequate attention should be paid to Bangladesh's policing system, which is guaranteed blanket immunity by the government, despite the most heinous crimes being committed by officers.

In the last ten years, the ALRC has reiterated that torture is the norm in Bangladesh's law-enforcement system. Aside from submitting numerous individual cases to the Special Procedures, the ALRC has consistently urged the Council to hold Bangladesh accountable for maintaining a torturous policing system and to protect its citizens from the torture and inhuman ill-treatment of its State-agents.

Although Bangladesh has remained a Member of the Council for more than seven years in the last decade, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has never been invited to visit the country. This indicates Bangladesh's level of non-cooperation, particularly as a party to the Convention Against Torture (CAT) and also a long-standing Member of the Council, in contrast to its voluntary pledges submitted in 2006[1] and in 2014[2] prior to the Council Membership elections.

Torture is institutionalised in Bangladesh for maintaining the so-called law and order and what operates in the guise of criminal investigation, while extortion from detainees, pedestrians, and ordinary citizens is the way of law-enforcement. State agencies routinely use torture to serve the political master of the day, for the purpose of silencing opposition and critics. Systemic torture is used by the Bangladesh Police, paramilitary forces such as the Rapid Action Battalion (RAB) and the Border Guards-Bangladesh (BGB), and the intelligence agencies such as the Directorate General of Forces Intelligence (DGFI) and the National Security Intelligence (NSI), in their respective custodies, camps, safe-houses, and secret detention centres across the country.

Law enforcement and intelligence agencies have created extreme fear in the society. In addition to the conventional methods of torture, such as the beating of limbs, giving electric-shocks, water-boarding, and keeping detainees naked in dark and extremely cold rooms or in high-voltage torture cells, the police have established a new pattern.

The police have been arresting civilians, including opposition activists and ordinary persons, and tying-up their hands and legs with handcuffs and ropes, and then proceeding to shoot at their limbs, in custody. The wounded victims are left on the floor of the police station for hours to bleed from their injuries. After massive loss of blood, the police take the victims to hospital.

In many cases, physicians then decide to amputate the limbs, due to the delay in hospitalisation. If the victims survive, they are permanently disabled. Then, the police proceed to fabricate criminal cases against the victims, to prevent them from sharing their stories to the media and human rights organisations. Additionally, their families are forced to pay bribes amidst constant intimidation and threats. None of the victims are allowed to register a complaint against the perpetrators, who are members of law enforcement agencies.

Earlier, the international community and the ALRC welcomed the enactment of an anti-torture legislation in Bangladesh. The Bangladesh National Parliament passed the "Torture and Custodial Death (Prohibition) Act-2013" on 25 October 2013. Since the enactment, however, only two cases of torture have been registered with the Magistrate's Courts under this law, in contrast to the numerous incidents of torture that routinely occur throughout the country.

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[1] Bangladesh's Voluntary Pledges submitted to the UN in 2006, can be accessed at: http://www.un.org/ga/60/elect/hrc/bangladesh.pdf

[2] Bangladesh's Voluntary Pledges submitted to the UN in 2014, can be accessed at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/69/393

In fact, the police do not register complaints alleging torture, extrajudicial executions, or enforced disappearance as the allegations are against their colleagues. If any complaint is registered with the Magistrate's Court, the police – who are the statutory investigators of the criminal cases – protect their colleagues in exchange of bribes.

The investigation of a torture case or other gross violation of human rights ends up branding the victim as a criminal. The investigation process ultimately stigmatises the victims and their families in society, as there is no form of remedy available. As a result, the complaints of torture do not proceed toward prosecution. Even during the seven years that Bangladesh was a Council Member, not a single case of torture reached the prosecutorial stage before the Judiciary.

The government deliberately recruits a group of substandard lawyers – who are active supporters of the ruling party – to work as prosecutors. This is done for the purpose of exonerating the cadres and leaders of the ruling party whose commission of crimes knows no bound until that party is ousted from office by another party's violent political outrage.

Bangladesh's Judiciary – from the Magistracy to the Supreme Court – has earned the reputation of being the extended hand of the government. The Judiciary has continuously abdicated its own power, to the extent that the Chief Justice has publicly stated that the executive is taking away all power of the Judiciary.[3] As a result, the Judiciary is left with no capacity to guarantee remedies or protection to the victims of human rights abuse. In fact, it can be said that justice institutions in Bangladesh simply do not have the ability to uphold the rule of law.

Over the years, successive governments have consistently contributed to the damage of Bangladesh's justice institutions. In order to silence dissenting voices within its jurisdiction, the rulers have made use of the torturous policing system, a coercive investigation mechanism, a substandard prosecutorial unit, and an incompetent Judiciary. Together, such malfunctioning institutions have created an ideal environment for authoritarian power to take root. Silencing citizens by using these "justice" institutions has widened the scope of earning undeserved wealth, without any risk or fear of consequences.

People's fundamental freedoms cannot be practiced in a country where justice institutions exist as a mere facade. The independent experts of the UN and the international community have witnessed these realities too.

Now, the time has come to change the human rights mechanisms. There must be a new discourse on how citizens can be protected from atrocities committed by the institutions meant to protect them.

The UN Human Rights Council, its Special Procedures and the Treaty Bodies should understand the ground realities of countries like Bangladesh. The conventional pattern of recommendations like 'investigate, prosecute, and adjudicate' needs to change following the experiences of the last ten years. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment should not regret that the mandate has not yet been invited for a country visit to Bangladesh.

The Council should adopt a new policy for the protection of people, as immediately as possible, if it is sincere about protecting people from gross abuses of human rights.

The new policy should include effective initiatives of rebuilding justice institutions. Rebuilding does not mean constructing new court buildings, but rather rebuilding institutions and their concepts, to the extent that equality before the law and right to fair trial can be guaranteed. These institutions must never entertain impunity, which has no place in any genuine rule of law jurisdiction.

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[3] Asian Human Rights Commission, "Chief Justice speaks out against Executive usurping the power of the Judiciary" can be accessed at: http://humanrights.asia/news/ahrc-news/AHRC-STM-005-2016